

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg  
. Chapter 11  
.   
MOTORS LIQUIDATION COMPANY, . One Bowling Green  
. New York, NY 10004  
.   
Debtors. . Wednesday, February 5, 2020  
. . . . . 11:04 a.m.

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE REGARDING THE BRIEFING  
SCHEDULE FOR THE AAT DISTRIBUTION MOTION  
**BEFORE THE HONORABLE MARTIN GLENN**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

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1 (Proceedings commence at 11:04 a.m.)

2 THE COURT: Please be seated. We're here in Motors  
3 Liquidation Company, 09-50026. I have a list of appearances in  
4 front of me.

5 So I set this conference in an order dated  
6 January 28th, which is ECF 14-662. The Court has received  
7 correspondence and some proposed orders that generally relate  
8 to the subject. A couple of other things I would say at the  
9 outset:

10 At the request of some of the parties in the trust,  
11 the Court entered a show-cause order establishing February 26th  
12 as the deadline by which the remaining late claim movants must  
13 file notice of intention to proceed pro se or counsel to the  
14 remaining late claim movants, if any, must file notice of  
15 appearance in this Chapter 11 case. That show-cause order is  
16 ECF 14-658 and is self-explanatory.

17 Let me put a couple of things on the record that  
18 relate to that, however. So that order was 14-658. 14-661 was  
19 the scheduling order for briefing late claims motions. It  
20 actually put off the schedule on briefing in the AAT motion  
21 until the conference today.

22 In response to the order to show cause and the  
23 scheduling order, my chambers received a telephone call on  
24 January 31st from a late claim potential movant, Joelle Moza,  
25 M-O-Z-A, individually and as a representative of the estate of



1 Loretta Moza, her mother. She called to inquire about the  
2 order to show cause, 14-658, and the scheduling order, 14-661,  
3 she had received in the mail. She was -- as reported by my law  
4 clerk, she said she was confused by these documents because a  
5 previous attorney had told her that she no longer could pursue  
6 claims on behalf of her mother due to the pending bankruptcy  
7 case. She wanted to know whether she should retain counsel and  
8 how to proceed with the case.

9           My law clerk checked with me and after speaking with  
10 me, my law clerk explained to Ms. Moza that we could not  
11 provide her with any legal advice and referred her back to the  
12 documents she had received in the mail. She said she  
13 understood but wanted to confirm this was not a scam. My law  
14 clerk told her the documents she received in the mail were  
15 legitimate court documents. That's all the information I have  
16 on it.

17           Whether -- I'm not going to do anything further with  
18 it. If any of the counsel in the case believe that they should  
19 be in touch with Ms. Moza, I'm going to leave it to you to  
20 decide that but that reports fully on what transpired. That's  
21 the only inquiry that the Court received from anyone who  
22 received the order to show cause and the briefing schedule.

23           With respect to the issues as to which I set this  
24 conference today, Mr. Fisher, let me hear from you first  
25 because I think both matters really do relate to the AAT and



1 the two matters as indicated in the order that I want to  
2 address are the briefing schedule for the AAT distribution  
3 motion and I won't recount the whole history obviously. You  
4 had made a distribution motion and there's a history about it.  
5 New GM's counsel responded to your letter and indicated its  
6 view that it was more appropriate that the AAT have the  
7 opportunity first, since it's the one that's seeking relief, to  
8 file any supplemental brief if it wishes to do so. And in  
9 response to that, other parties having the opportunity to file  
10 a response.

11 The second matter I raised in the order was whether  
12 the AAT should be ordered to participate in a mediation before  
13 retired Judge Phillips. So those are the two things I would  
14 like for you to address.

15 Go ahead, Mr. Fisher.

16 MR. FISHER: Good morning, Your Honor. Eric Fisher  
17 for the Avoidance Action Trust. I just wanted to provide a  
18 60-second recap --

19 THE COURT: Please go ahead.

20 MR. FISHER -- of where the Avoidance Action Trust is  
21 at the moment.

22 THE COURT: Sure. Okay.

23 MR. FISHER: Our goal has always been to distribute  
24 as much of the money that we have recovered in the Term Loan  
25 litigation as possible to our beneficiaries and to distribute



1 that as quickly as we possibly can. As the Court knows, we  
2 took in \$231 million in a global settlement of the Term Loan  
3 case and we had an additional 2.2 approximately million dollars  
4 that we had previously taken in from individual settlements.

5 At this point, we have paid all litigation funding  
6 expenses of the Avoidance Action Trust. We have held back  
7 seven and a half million dollars to meet potential costs that  
8 the Trust may incur in the future. And pursuant to an order of  
9 this Court dated August 16, 2019, we distributed \$38.3 million  
10 to the DIP lenders, who are the 30 percent beneficiaries of our  
11 trust.

12 And since that August 2019 order, we are in the  
13 current holding pattern that we are in. I'd say we're on pause  
14 and we're eager to distribute the approximately \$102 million  
15 that we have available at the moment to distribute to our  
16 allowed unsecured beneficiaries. And then our plan beyond  
17 that, which we laid out in the distribution motion that we  
18 filed back in July 2019, would be that to the extent that  
19 there's money left over from the seven-and-a-half-million-  
20 dollar hold-back -- and at this point, we expect that there  
21 will be -- we would plan to make a further distribution to the  
22 DIP lenders and to our unsecured creditors to push out as much  
23 cash as possible from the trust into the hands of our  
24 beneficiaries. That's where we are.

25 I wanted to first deal with your Court -- the Court's



1 question about mediation and then pivot to the briefing  
2 schedule, because I think the two issues are related. And I  
3 don't want to dwell on this, but we did think that it was not  
4 appropriate for New GM to raise with the Court issues that  
5 concerned positions that the Avoidance Action Trust was taking  
6 in a conference with the Court that we weren't notified about,  
7 they didn't notify us about, and they didn't tell us that any  
8 issue concerning the AAT would be raised with the Court during  
9 that conference. So we've told that to the New GM and I'm  
10 happy for the chance to address the issue directly for the  
11 Court.

12 THE COURT: The reason that I -- at that hearing, I  
13 urged Ms. Goin (phonetic) to contact you. She'd indicated  
14 that, on the subject of mediation, she indicated that she had  
15 only advised you -- I don't know if it was a day before a  
16 mediation session, and that you had declined to participate at  
17 that point. With such short notice, I was not at all  
18 surprised. I mean, you're a lawyer for a client and it, under  
19 any circumstances, would require client input.

20 So I didn't particularly put weight on what anybody  
21 said in an argument as to whether you should or shouldn't  
22 participate. And even with respect to the proposed scheduling  
23 order, which I think it had been communicated to me that you  
24 had objected to the schedule, I entered an order, gave anybody  
25 who wanted, including you, a chance to respond. You did. And



1 we're here, so --

2 MR. FISHER: Okay. Well, so --

3 THE COURT: So I wouldn't get too caught up with  
4 whether New GM, in your absence, took a position on whether or  
5 not you should or shouldn't participate in mediation. We're  
6 here to talk about it now.

7 MR. FISHER: Okay. So we have -- following that  
8 telephone conference with the Court, we have had conversations  
9 with counsel for the Economic Loss Plaintiffs and with counsel  
10 for New GM, we have tried our best to understand their  
11 position. We have consulted closely with our trust monitor and  
12 with our trust administrator. We have evaluated the positions  
13 that they've advanced, and we've engaged in some measure of  
14 negotiating of whether there's a resolution and, of course, I'm  
15 not going to discuss the substance of that.

16 But in broad strokes, we've been very clear that in  
17 the letter to the Court back in October 2019, and in  
18 conversations with them ever since, that we do not think that  
19 there is any legal or practical way that they could assert a  
20 claim against our trust. Our negotiating position in  
21 settlements reflects our view of that. We think that it would  
22 be unfair to our beneficiaries to pay more than is reasonable  
23 to make them go away so that we can make our distribution. And  
24 so our negotiations have continued but to date, have not borne  
25 fruit.





1 And we don't think -- given how far apart we are, we  
2 don't think that mediation would be productive. We think it  
3 takes time and money. We think both sides are perfectly  
4 capable of continuing to talk to one another. What we do think  
5 could help bring about a resolution here is actually requiring  
6 the other side to put in writing, before this Court, the basis  
7 on which they think that there's any conceivable claim that  
8 either New GM or the Economic Loss Plaintiffs may someday, in  
9 any conceivable scenario, have against our trust. And --

10 THE COURT: Why don't you tell that to Judge Philips?

11 MR. FISHER: Well, of course if Your Honor thinks  
12 that that's where we should continue these discussions, of  
13 course we'll be guided by whatever the Court thinks is best.  
14 But we really think and this brings me to the briefing  
15 schedule. I mean, their briefing schedule, you know, it goes  
16 out until April 20th. And April 20th is essentially, under  
17 their proposal, the first time they would ever put in writing  
18 before this Court the basis on which they're asserting that  
19 they have any kind of claim against the AAT.

20 So our briefing schedule differs from theirs in two  
21 respects: It's faster. We would have the issues briefed  
22 entirely by March 9th. And as the Court pointed out, it flips  
23 the order. But the reason for that is because we don't really  
24 know exactly what arguments or positions they're going to  
25 articulate. They know full well why it is that we say that

1 they have no conceivable claim against the AAT. And so the  
2 briefs would just miss each other. It wouldn't -- it just  
3 wouldn't be good briefing. They need to lay out their  
4 arguments so that we know what it is that we're -- that we need  
5 to respond to. And then we propose replying by March 9th and  
6 we think the pressure of parties actually having to articulate  
7 their positions on the merits before this Court could help  
8 contribute to bringing about a resolution here.

9 THE COURT: I want to play devil's advocate one  
10 minute. I have no doubt that you have what you believe are  
11 compelling arguments as to why the economic loss claimants have  
12 no claim against the AAT. And it certainly may be that at some  
13 point in time I will have to resolve that.

14 (Cell phone ringing)

15 THE COURT: Could be an important call you're  
16 missing, Mr. Weisfelner.

17 MR. WEISFELNER: Oh, I'm sure it was. Again,  
18 apologies.

19 THE COURT: Okay. There are a lot of moving pieces  
20 going on right now. And I never compel anybody to settle if  
21 the parties -- any settlement has to be one that's consensually  
22 reached by the parties, hopefully well-informed parties. But  
23 in light -- and one of the reasons the schedule -- the briefing  
24 schedule is stretched out is because there are a lot of moving  
25 pieces going on at the present time, which may result in really



1 a change in the landscape as to what we're -- what I have to  
2 deal with or Judge Furman has to deal with. And I think that,  
3 again, playing devil's advocate, I'm not ordering it yet, but  
4 if you're satisfied with the papers that you've already  
5 submitted, fine. Just say, you know, we -- the AAT does not  
6 wish to file any supplemental brief.

7           If you want to file a supplemental brief, I mean, I  
8 think that, assuming that I order the AAT to participate in a  
9 mediation before Judge Phillips, who's been remarkably  
10 successful in what he's accomplished in GM Motors Liquidation,  
11 the benefit of it is you've laid out your position for Judge  
12 Phillips and he'll understand quite clearly what your position  
13 is in any mediation and try and reach your client -- will try  
14 and reach some resolution that's something of a compromise or  
15 not.

16           But I think -- let's assume, because I am going to  
17 order you to go to do the mediation. Okay? I don't --  
18 frankly, the time and expense of doing the mediation in the  
19 context of this case, frankly, is not very great, Mr. Fisher.  
20 And I think that before the mediation, you should set out your  
21 position, whether it's just saying, it's set out in our prior  
22 motion, we have nothing else to add, or a supplemental brief  
23 that I may ultimately have to read and decide. But lay out  
24 your position so that it's fully -- you know, it's clear. I'm  
25 not saying that the prior motion papers aren't. That's why I



1 say if you don't want to file anything, fine, don't file  
2 anything.

3 But I do agree with New GM's standpoint. You're the  
4 one that's seeking the relief. You ought to have your position  
5 laid out to the Court or to the mediator. They ought to go  
6 next at this briefing before me, and then if there's something  
7 that's a reply to whatever the other parties in interest  
8 submit, fine. A narrower reply to whatever is part, that would  
9 be the normal way that I would view the briefing schedule.

10 MR. FISHER: Sure. On the narrow briefing point,  
11 Your Honor, I think what's most important to us is the  
12 opportunity to reply because we really don't feel as though we  
13 know what the other --

14 THE COURT: Well, are you telling me you don't wish  
15 to file anything now? This is your -- look. I --

16 MR. FISHER: Sure.

17 THE COURT: What I'm saying is if you file a reply,  
18 it's going to be a reply to what they -- the opposition that  
19 they filed to your motion. It's not going to be -- you're not  
20 going to raise new arguments. If you have arguments that you  
21 want to make that you haven't made before, or you want to  
22 succinctly state your position again that not only I will have,  
23 but Judge Phillips would have, fine. If you don't want to do  
24 that, fine. But any reply you file, if you're going to file a  
25 reply, the reply has to be directed only to the arguments that



1 are raised by the other side. I'm not going to give you a free  
2 shot, and then because somebody can come back and say, well, we  
3 want to file another brief. We're not going to do that.

4 MR. FISHER: So, Your Honor, we'd be happy to file an  
5 open brief to set out our position more clearly and more fully  
6 and -- but provided that we have an opportunity to reply to  
7 whatever it is that they say.

8 THE COURT: But replies, again, replies should be  
9 directed to --

10 MR. FISHER: Of course.

11 THE COURT: -- the opposition that's filed. And I'm  
12 sure you'll do that. Again, I didn't go back and read your --  
13 the brief from the earlier go-around. If you want to -- again,  
14 if you want to stand on that, that's fine.

15 MR. FISHER: No, I think -- Your Honor, I do think  
16 there are benefits to our amplifying our position. There's no  
17 doubt about it. I -- my --

18 THE COURT: Look, it isn't only going to be my eyes  
19 because I am going to order you to go to the mediation.

20 MR. FISHER: Okay.

21 THE COURT: I don't -- frankly I don't see the down  
22 sides. The argument that it's additional time and expense, I  
23 -- I'm sorry. I don't -- in the context of this whole matter,  
24 I don't -- I'm not putting much weight into that. Okay? I  
25 don't think -- if there's -- you know, Judge Phillips, who's



1 been -- who's a very experienced judge and a very experienced  
2 mediator, after one session, will decide with others whether  
3 people should come back or not, or whether it's a single  
4 session. I'm not going to get into that now. Okay.

5 MR. FISHER: I have nothing further, Your Honor.

6 THE COURT: What -- when -- here's what I would  
7 suggest. When we finish today, let's take a short break. See  
8 if you can agree with other counsel as to when you're going to  
9 file your supplemental brief. Okay? Because rather than me  
10 just setting the date for it. Let's see what we get to today.  
11 Okay?

12 MR. FISHER: Yes.

13 THE COURT: Anything else you want to add at this  
14 point?

15 MR. FISHER: No, Your Honor.

16 THE COURT: Thanks very much, Mr. Fisher.

17 Mr. Weisfelner, go ahead.

18 MR. WEISFELNER: Thank you, Judge.

19 Your Honor, just a couple of minutes with some  
20 necessary background, I think, would put everything into  
21 context.

22 As Your Honor knows, as all the parties in court are  
23 aware, the GUC Trust, New GM, and the Economic Loss Plaintiffs,  
24 continue in a mediated effort designed to reach a global  
25 resolution. And by "global," I don't mean to leave the AAT



1 out, but we have devised a framework that would allow us to go  
2 forward, with or without the AAT on board.

3 That effort towards a mediated settlement, as Your  
4 Honor quite rightly noticed, is taking up an awful lot of  
5 attention. There are self-imposed deadlines that the parties  
6 are working towards. But the other important thing to keep in  
7 mind is that elements of the anticipated settlement would  
8 impact on the AAT as currently contemplated by one or more  
9 parties to the settlement; in particular, what, if any,  
10 estimated dollar amount gets placed into the settlement  
11 agreement, reflecting either the class claim, or classes'  
12 claims, or individual claims.

13 Now, let's turn back to how all of that impacts the  
14 AAT. And understand that our position, vis-à-vis the AAT  
15 counsel, was that in order to break this logjam, the logjam  
16 being they want to make a distribution, that we ought to either  
17 involve them in mediation, which they have adamantly refused,  
18 up to and including ten minutes before Mr. Fisher got to the  
19 podium, but beyond that, we said to counsel, afford the parties  
20 an opportunity please to sit down with your decision-makers,  
21 the monitor, or whoever it is at Wilmington that calls the  
22 shots.

23 Once upon a time, Your Honor will recall that  
24 Wilmington, represented by Gibson Dunn, were both the subject  
25 of -- a very distant memory but it rings sort of true today --



1 that we had some difficulty with the powers that be at  
2 Wilmington in terms of operating in what I'll call, in general,  
3 "good faith." It's reminiscent of that old-time experience  
4 with Wilmington that we thought was cured with new counsel.

5 THE COURT: Mr. Weisfelner, that's past history.

6 MR. WEISFELNER: Okay.

7 THE COURT: And in setting this conference, I  
8 indicated, with respect to whether the AAT and the order set  
9 along with a representative of the AAT, with settlement  
10 authority shall be ordered to attend the mediation.

11 MR. WEISFELNER: And I recognize that gentleman with  
12 the striped tie. I think I know who he is. My point is simple  
13 and, with all kidding aside, the parties on my side of the  
14 courtroom have asked for two things: One, participate in  
15 mediation. The answer's been a resounding no.

16 THE COURT: Well, the answer now is a yes.

17 MR. WEISFELNER: Okay. But alternatively we did ask,  
18 and some people might think it was more efficient. I don't  
19 particularly care that we get an opportunity to talk directly  
20 to the powers that be, but that's neither here nor there.

21 I think that the biggest problem that we have in  
22 communicating with each other is I think we've been crossing  
23 each other in the dark as to what the true threshold issues  
24 are. Now, Your Honor, if I can help you to recall what their  
25 position was in their October letter, I think it highlights why





1 we've been missing each other.

2 To summarize the arguments that the AAT has put  
3 forward as to why we can have no legal or probable way to  
4 assert a claim, is their contention that their constituent  
5 documentation that was approved by the bankruptcy court back  
6 during the day before or in connection with confirmation, said  
7 two critical things: Number one, you had to have been a  
8 contested claimant or a registered claimant or an allowed  
9 claimant as of a date certain to even qualify to have any  
10 attention paid to you; similarly, according to their  
11 constituent documentation, you had to be awarded a claim in a  
12 dollar amount sufficient to afford you a \$25 distribution.

13 In their judgment, and it's their judgment, it's not  
14 a court order, your client doesn't qualify as holding a  
15 contested claim as of a date certain, and based on our  
16 assumptions, our assumptions, that the impact of Judge Furman's  
17 August decision, you'll never get there. That's not a judicial  
18 determination, that's their conclusion based on their reading  
19 of an order that has since been certified for a direct appeal.

20 My point being that, in much the same way, that the  
21 appellate courts in this jurisdiction have determined that the  
22 sale order violated due process, that the bar order violated  
23 due process. How in the world do they suspect that their  
24 constituent documents locking in the \$25 limitation or the  
25 requirement that you be on file by a date certain, before the



1 recall was ever noticed? That's a figment of their imaginative  
2 creation.

3           So if we want to have a threshold issue that gets us  
4 to the point of focus, it's do your constituent documents, to  
5 the extent they require a \$25 minimum distribution and/or that  
6 you be registered as of a date certain, as if those issues  
7 won't be resolved as part of our global settlement without  
8 them. Is that effective? Does it bind anybody? If you get  
9 beyond that point, then I think the rest of their arguments  
10 fall away.

11           THE COURT: May I ask this? First, have dates been  
12 established for additional mediation sessions with Judge  
13 Phillips?

14           MR. FISHER: If needed. The parties are in the  
15 process of exchanging definitive documentation that will, as I  
16 understand it, will be circulated to the parties, ultimately  
17 filed, both with this Court and with the District Court. Some  
18 issues may involve or require a withdrawal of the reference.  
19 Some of them may require Your Honor sitting on a 9019.

20           THE COURT: Yeah. And as I've always tried to be  
21 careful about this. I think the last time you were here, I  
22 asked did anybody object to me speaking with Judge Furman. No  
23 one did, although maybe on the phone. And I did speak with  
24 Judge Furman and he and I -- we only had one conversation about  
25 it, but there was -- he and I discussed 9019s, partial



1 withdrawal of the reference. No definitive answers on any of  
2 that, but we -- he and I did have a conversation. And I don't  
3 know what the schedule going forward with Judge Furman will be,  
4 but my question is really is there a session with Judge  
5 Phillips at this stage or when, assuming I'm going to enter, if  
6 necessary, I'll enter a written order requiring the AAT to  
7 mediate. I'm not sure if the written order is going to be  
8 necessary, but I'm happy to sign one.

9 Are there dates with Judge Phillips at that point?

10 MR. WEISFELNER: I think there is reserved time with  
11 Judge Phillips if and only if, in the process of documenting  
12 how far we've gotten so far, there's a glitch or an impasse.

13 THE COURT: Well, if there's a glitch or an impasse  
14 with the AAT, that may be -- the AAT's position, I'm thinking  
15 back to when the distribution motion came out, and it was quite  
16 a strong, respectable position. I'm not disputing that.

17 I think that you've not been able, outside of  
18 mediation, to make progress in reaching a settlement. I think  
19 one or a few sessions with Judge Phillips would be appropriate,  
20 whether it's in the form of written mediation statements so  
21 that Judge Philips understands each side's position with  
22 respect to the AAT, whether it's the supplemental brief that  
23 Mr. Fisher is going to file in this court could be used as a  
24 mediation statement, but it does seem to me that anybody on  
25 your side of the courtroom, Mr. Weisfelner, Judge Philips would

1 benefit likewise from having a mediation statement. It may  
2 ultimately be the brief that you're -- that is going to be  
3 filed here, but I think he ought to have some paper in front of  
4 him that would -- going into a mediation session, that he  
5 understand these are the arguments that each side are making.

6 MR. WEISFELNER: Two things relative to that. If I  
7 had my druthers, given an order of the Court that the AAT shall  
8 participate in mediation, I would suggest that the AAT, on the  
9 one hand, New GM and the Economic Loss Plaintiffs on the other,  
10 sit down telephonically with Judge Phillips. I say  
11 telephonically because he's on the West Coast, not -- I mean,  
12 he's in New York occasionally, but suggest a meeting with Judge  
13 Phillips either by phone or in person if it could be arranged  
14 in New York. And the parties discuss with Judge Phillips how  
15 to best facilitate his mediation. Does he want written  
16 statements? Does he want briefs? How would he like to go  
17 about this? I would suggest that as stage one.

18 As an alternative, by the way, to the stage one, or  
19 as a parallel track, if at any point Wilmington or Judge  
20 Gonzales or anybody else wants to take us up on the opportunity  
21 to sit down without the mediator, we're happy to accommodate.  
22 So that would be my suggestion, Judge.

23 THE COURT: Okay. Anybody else on that?

24 Mr. Kimpler, you want to be heard?

25 MR. KIMPLER: Good morning, Your Honor. Kyle Kimpler



1 from Paul Weiss on behalf of New GM.

2 I'll be very brief, Your Honor. I just want to be  
3 clear that the mediation is ongoing and progress is being made.  
4 There is nothing definitive to report to the Court at this  
5 point. I just have to say that.

6 As far as the scheduling goes on the mediation,  
7 certain dates were made available, I think, two or so weeks  
8 ago. We'll have to check with Judge Phillips whether those are  
9 still on his calendar, and we will do so immediately.

10 And then lastly on the issue of briefing, we'll talk  
11 with Mr. Fisher and see if we can come up with something. I do  
12 think though that there could be an issue as to the scope of  
13 that briefing. Because on the one hand, you could say, to  
14 determine that, you have to go through all of the late claim  
15 motions, you know, all of the merits of Plaintiff's claims, et  
16 cetera. I don't think that's what's being envisioned. I think  
17 what's really being envisioned is, is there a way that the AAT  
18 can make a distribution and essentially just disregard the  
19 Plaintiff's claims? And to the extent that is the issue that  
20 needs to be briefed, we are -- you know, we'll work with the  
21 schedule.

22 THE COURT: Okay. Thank you.

23 MR. KIMPLER: Thank you.

24 THE COURT: Anybody else?

25 Mr. Fisher. Mr. Fisher, go ahead.



1 MR. FISHER: Your Honor, I don't want to belabor the  
2 merits that Mr. Weiss (sic) wants to argue to, but just very,  
3 very briefly, and we'll set it forth in the brief and/or  
4 mediation statement. But you know our position is that even if  
5 Judge Furman had credited and not discredited the damages  
6 analysis contract, even if at some future date this Court  
7 allows late claims by the Economic Loss Plaintiffs, even if  
8 Economic Loss Plaintiffs assert claims, they won't have a claim  
9 against AAT. So that's, you know, and that's -- we'll play  
10 that out in our discussions with them and in our brief to the  
11 Court. But that's why we say that there's no reasonable claim  
12 against the AAT here. I don't feel like our position was  
13 fairly characterized.

14 THE COURT: Now, let me ask this, Mr. Fisher. Do you  
15 want an order from the Court that the AAT mediate? I'm happy  
16 to sign an order.

17 MR. FISHER: Your Honor, I consider -- we consider  
18 ourselves as having been ordered by the Court to participate in  
19 mediation.

20 THE COURT: Let's take a break until noon. I would  
21 like for you all to discuss and see if you can agree, on a --  
22 and I am going to require you, if you wish, to file a  
23 supplemental brief, to go first. I -- what I would -- and  
24 maybe you would disagree with this. I would certainly envision  
25 what you're going to file also could serve as a mediation



1 statement at the AAT, so you're not going to be duplicating  
2 what you're going to be doing. You have your brief  
3 incorporated by reference. I'll go back and read it.

4           So I do think -- as I've said, I think it would be  
5 beneficial for the mediator to see in writing what the AAT's  
6 position is, clearly stated, and what the New GM and Economic  
7 Loss Plaintiffs clearly state it is. And the mediation may be  
8 unsuccessful, in which case, you know, in terms of the schedule  
9 here, because of the moving pieces that are going on now that  
10 are very important, you're not going to get a hearing, you  
11 know, next week or in two weeks or something like that. I want  
12 to make that clear.

13           I think it's important, what that the GUT Trust,  
14 Economic Loss Plaintiffs, New GM, have an opportunity to get  
15 their, you know, get, if there's going to be a settlement, that  
16 it get done in writing, and what, you know, what specific  
17 pieces it envisions that Judge Furman would do, that I would  
18 do, et cetera. I think the last time I spoke with all of you,  
19 I mentioned that in MF Global, Judge Marrero and I had sat  
20 together because we both had to approve a settlement. I  
21 mentioned that to Judge Furman in our call. We didn't decide  
22 anything because we don't know what you're all going to  
23 actually be proposing, but that's basically the sum and  
24 substance of my conversations with Judge Furman. At an  
25 appropriate time, he and I will continue to talk about it.



1           Let me ask, are there dates set with Judge Furman  
2 when things are supposed to be done? I thought I vaguely  
3 remembered a date in February when he was told that there was  
4 likely to be a written -- written motions presented?

5           Mr. Kimpler.

6           MR. KIMPLER: Kyle Kimpler for New GM again, Your  
7 Honor. I believe tentative dates have been floated for  
8 potential motion papers. I believe during a more recent  
9 discussion, there was some discussion about how those dates may  
10 get pushed off by a matter of weeks, not more.

11           THE COURT: Okay. All right. Let's take a recess.  
12 Why don't you talk -- see whether you can work out an agreement  
13 on briefing schedule, potential dates for availability. I know  
14 you have to check with Judge Phillips about when he's  
15 available.

16           I absolutely -- whether it's Judge Gonzales who's in  
17 the courtroom or whether there's someone else at Wilmington  
18 Trust, mediation only makes sense, in my view, and this is what  
19 I -- you know, counsel, along with representatives with  
20 settlement authority. They may still have to run up the  
21 flagpole with others. That's not everybody. But you've got to  
22 have people with settlement authority who will participate in  
23 mediation.

24           Mr. Weisfelner's suggestion that there be a phone  
25 call with Judge Phillips, that's fine with me as well. Okay.





1 Let's take a break until noon. Okay? Thank you very much.

2 (Recess taken at 11:42 a.m.)

3 (Proceedings resumed at 12:46 p.m.)

4 THE COURT: Please be seated. We're back on the  
5 record in Motors Liquidation Company, 09-50026.

6 Mr. Fisher?

7 MR. FISHER: Your Honor, Eric Fisher for the  
8 Avoidance Action Trust.

9 THE COURT: You'll tell me you settled?

10 MR. FISHER: No. Sorry to keep the Court waiting and  
11 to have so little to report, but, as the Court might imagine,  
12 we ended up speaking about a lot more besides just the briefing  
13 schedule. But we have agreed on a briefing schedule.

14 THE COURT: Okay.

15 MR. FISHER: So the Avoidance Action Trust's opening  
16 brief will be --

17 THE COURT: Let me suggest this. Give me the dates  
18 on the record but submit a proposed order that includes it so  
19 that I can do it on the docket. Okay? But go ahead and lay it  
20 out.

21 MR. FISHER: So the AAT's opening brief will be due  
22 March 6. The Economic Loss Plaintiffs and New GM's opposition  
23 is due March 27. And then the AAT's reply is due April 15.  
24 And separate from the briefing schedule, and consistent with  
25 what Your Honor ordered from the bench, the parties will



1 jointly reach out to Judge Phillips and try to get that process  
2 going as soon as possible.

3 THE COURT: Appreciate it.

4 Mr. Weisfelner?

5 MR. WEISFELNER: Just, I guess, two caveats. The  
6 date of March 27th --

7 THE COURT: Yes.

8 MR. WEISFELNER: -- I indicated I will have to run by  
9 the co-leads because I'm not doing the work. Yes, because I am  
10 unique among all the attorneys; I am not getting paid.

11 THE COURT: I would agree with that, but go on.

12 MR. WEISFELNER: But I'm not -- and I'm not getting  
13 paid, which in this situation, makes me unique. We're on a  
14 contingency fee.

15 THE COURT: Okay.

16 MR. WEISFELNER: And --

17 THE COURT: I didn't mean to make light of it, but in  
18 any event --

19 MR. WEISFELNER: The other caveat I wanted to raise  
20 is we're going to go along with these dates for the reason that  
21 Mr. Fisher ultimately made in our discussion.

22 Your Honor, historically, every time either Your  
23 Honor or Judge Gerber, before him, set briefing schedules, it  
24 was after the parties articulated their version of what are we  
25 briefing, what are the threshold issues that are going to be



1 resolved through this briefing schedule. I pressed for that to  
2 be a prerequisite. Mr. Fisher responded, well, you know what;  
3 when you see my brief, you'll know what the issues are.

4 At this point, I've had enough. I'll see his brief,  
5 then I'll figure out the issues as he has sought to articulate  
6 it, and we'll respond. Not the way to run a railroad, in my  
7 opinion.

8 THE COURT: Okay. You're not doing the work anyway,  
9 so let someone else worry about it.

10 Anybody else want to be heard? Okay.

11 You're all going to reach out to Judge Phillips and  
12 try and -- I mean, I think -- I always leave it to a mediator  
13 to decide whether he or she wants a mediation statement. It  
14 may well be that -- actually, with this briefing schedule, I'm  
15 not sure whether what briefing will done before you get a date  
16 from Judge Phillips, but I always defer to a mediator to decide  
17 how they want to conduct the mediation, what they want, whether  
18 they want short mediation statements. Oftentimes, they'll just  
19 take the briefs that have been filed. So I'm going to leave  
20 that to Judge Phillips to do. Okay?

21 Keep me advised of whatever schedule you agree upon  
22 with Judge Furman. And obviously whatever briefs you file, if  
23 you're presenting a 9019 here, and if it moves forward, that  
24 he's going to do class certification issues, please exchange --  
25 I'd like to see all briefs that are filed in District Court.



1 I'm sure he would like to see whatever briefs get filed here as  
2 well, but I would like to see what the schedule is for all that  
3 is, so keep me advised on that. Okay?

4 Do you have another date with Judge Furman to get  
5 back to him again? Anybody else?

6 MR. KIMPLER: Your Honor, Kyle Kimpler for New GM.  
7 There is no set date for Judge Furman. There have been  
8 discussions that we would, if things were to be filed, would  
9 preview those dates with his clerk in advance. Certainly we  
10 would be happy to do the same with you as well.

11 THE COURT: Okay. Fair enough. All right. Anything  
12 else we need to talk about today? Mr. Weisfelner?

13 MR. WEISFELNER: Your Honor, one other point that  
14 actually Mr. Zirinsky raised and I think it's critically  
15 important. Any settlement of the matters that we're discussing  
16 should, whenever it be reached, is going to require very  
17 expensive notice, estimated to be something in the \$12 million  
18 range. If there is one global settlement, there is one notice  
19 cost.

20 Multiple settlements will not reduce the amount of  
21 cost, they'll be duplicative. And I think all parties need to  
22 keep that in mind, that while a settlement with all the parties  
23 other than the AAT is contemplated and possible, should there  
24 be an ultimate resolution with the AAT after what we've been  
25 referring to as the global settlement, I can tell Your Honor



1 that the cost of notice may be prohibitive and may require the  
2 parties to get to an ultimate litigated resolution, rather than  
3 a settled resolution.

4 THE COURT: We'll take this one step at a time,  
5 Mr. Weisfelner.

6 MR. WEISFELNER: Yes, indeed.

7 THE COURT: Okay. All right. We're adjourned.  
8 Thank you very much, everybody.

9 (Proceedings concluded at 12:52 p.m.)

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15 C E R T I F I C A T I O N

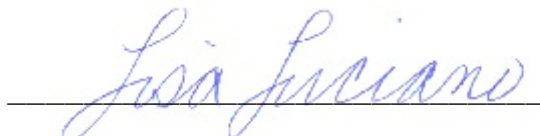
16

17 I, Lisa Luciano, court-approved transcriber, hereby  
18 certify that the foregoing is a correct transcript from the  
19 official electronic sound recording of the proceedings in the  
20 above-entitled matter, and to the best of my ability.

21

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LISA LUCIANO, AAERT NO. 327

DATE: February 11, 2020

25

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